



Patent  
Attorney Docket No.: 55190-012

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of )  
Josee. HAMEL, et al. )  
Serial No.: 09/471,255 )  
Filed: December 23, 1999 )  
Title: NOVEL STREPTOCOCCUS ANTIGENS )

Group Art Unit: 1645

Examiner: V. Portner

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**RESPONSE TO RESTRICTION REQUIREMENT**

Honorable Commissioner for Patents  
Washington, DC 20231

Dear Sir:

In response to the Office Action [non-final] mailed June 18, 2001, having a shortened statutory period for response set to expire July 18, 2001, wherein restriction and election of species has been required, Applicants hereby elect Group II (claims 16-20, 25) and all BVH-3 polypeptides, both with traverse, for prosecution in the above-identified application.

However, as stated, Applicants respectfully traverse the above-referenced restriction requirement for at least the following reason. The polynucleotides claimed in Group I encode those polypeptides claimed in claim Group II. Accordingly, as the polypeptides of claim Group II are derived from the polynucleotides of claim Group I, Applicants respectfully request withdrawal of the current restriction between Group I and II and request Groups I and II be examined in the current application.

In addition, Applicants respectfully traverse the election of species for at least the following reasons. Applicants traverse the Examiners conclusion that Group II is drawn to a

plurality of disclosed patentably distinct products comprising materially different polypeptides. Rather, Applicants invention in claim Group II (and Group I) covers only the polypeptides and polynucleotides for (1) the BVH-3 gene. Therefore claims in the elected Group II (and Group I), drawn only to SEQ ID NOS.: 2, 4, 6, 8, 10, 14, 16, 55 to 75, 77 to 79, 81, 83 or fragments, analogs or derivatives thereof, are all derived from the same BVH-3 gene. Furthermore, all of the foregoing polypeptide (polynucleotide) sequences for the BVH-3 gene come from the same sp64 strain of *Streptococcus pneumoniae*, except for SEQ ID NO.16.

Notwithstanding, the various polypeptides (polynucleotides) arising from the BHV-3 gene are simply different embodiments of the same invention. It is submitted that all of the embodiments for the BHV-3 gene should be examined in a single application.

Accordingly, it is respectfully submitted that the current election of species is sufficient and in compliance with 35 U.S.C. 121. However, if any issues remain outstanding, the Examiner is respectfully requested to contact the undersigned so the prosecution may be expedited.

To the extent necessary, please charge any shortage in fees due, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Date: 8/10/2001

Respectfully submitted,

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